vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO.889 OF 2001**

1. Smt.Vimal Basappa Koli
2. Shri Gajanan Basappa Koli
3. Smt.Amita Laxman Abhangrao
4. Miss Sunita Basappa Koli
5. Shri Sahaji Basappa Koli
6. Smt.Gangwwa Shripati Koli
   (deleted since deceased)

all residing at Kavathe Mahankal
Tal.:Kawathe Mahankal
Dist.: Sangli ... Appellants

V/s.

1. The Managing Director
Shri Mahankali Sahakari Sakhar
Karkhana Ltd., Rajaram Bapu Nagar
Kawathe-Mahankal, Sangli

2. The New India Assuarance Co
Ltd., Divisional Office, Sangli
Division, Mata Building,
Dr.Ambedkar Road, Sangli ... Respondents

Ms.Archana B. Kololgi with Mr.T.S. Ingale for Appellants
Mr.S.R. Singh for Respondent No.2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 30, 2005**

**ORAL JUDGMENT:**

. This First Appeal has been filed challenging the order of the Commissioner for Workmen's Compensation. The Commissioner has dismissed the application filed by the wife of the deceased workman on the ground that the accident due to which the workman died did not arise out of and in the course of employment.

2. The deceased workman Basappa Koli was an ex-army man. After retirement from the army, he was employed with Respondent No.1-Karkhana as a security guard. On 20.12.1989, the workman was found under the rear wheel of a motor truck No.MWE-1734 in the premises of the Karkhana. The workman died on the spot. Appellant No.1 is the wife of the deceased workman. Appellant Nos.2 to 5 are the children of the deceased. Appellant No.6 is the married daughter. A claim was filed contending that the deceased who was on duty between 8am and 4pm at the main gate of the Karkhana opened the gate for the truck to enter the factory premises. The truck entered the gate for being loaded with molasses. According to the appellant, the driver of the truck ran over the watchman who sustained head injuries and died on the spot. The appellants, therefore, claimed an amount of Rs.91109.80 together with interest and penalty. This calculation is made on the basis that the deceased was drawing Rs.1300/- per month and he was 45 years of age when he died.

3. This application was resisted by the respondent-Karkhana by contending that the deceased had committed suicide. The Karkhana contended that the deceased was posted at the colony gate and left his

appointed place of work without prior permission and went to the main gate. When the truck entered the Karkhana gate, the deceased suddenly jumped under the rear tyres of the truck and thus was killed on the spot. The police were informed and a Panchanama drawn. The postmortem report indicated that the deceased had died of shock due to severe bleeding from the head injuries. The insurance company i.e., Respondent No.2, filed their reply contending that they were not responsible for paying any amount to the applicants as the insurance policy did not cover the deceased. According to Respondent No.2, the policy in question was a motor vehicle policy issued under the Motor Vehicles Act. They contended that this policy cover was only for an accident sustained either by the Driver or Conductor of a motor vehicle. Therefore, Respondent No.2 denied any liability for making payment of compensation under the Workmen's Compensation Act.

3. Evidence of Appellant No.1 was led where she has stated that her husband was working as a watchman in the Karkhana and was drawing a monthly salary of Rs.1,300/- per month. She stated that he was 45 years of age. She has denied the suggestion put to her in the cross-examination that her husband was suffering from any mental imbalance. She has also denied the

suggestion that her husband suffered from any psychotic problem or that he was suffering from mental stress.

4. The Evidence led on behalf of the Karkhana was that of a clerk Prakash Ramchandra Sawant, Balu Rau Kakade and Babasaheb Shrimant Kulkarni. The Head Constable Balasaheb Shrimant Kulkarni was also examined. All these witnesses tried to establish that the workman had died on account of suicide and not because of an accident arising out of and in the course employment. However, all of them deposed that they were not eye witnesses to the death of the workman. The daily report of the watchman was produced on record indicating that the deceased was posted at the Colony point gate and not at the main gate on the day when the accident occurred The witnesses attempted to establish that one Sambhare was posted on duty at the main gate. However, the service clerk who was examined on behalf of the Respondent-Karkhana has stated that Sambhare’s name was not mentioned in the duty list and he had no evidence to show that Sambhare was posted at the main gate at the relevant time when the accident occurred.

5. The watchman who was examined on behalf of the respondent corroborated this statement of the earlier witness that Sambhare was on duty at the main gate but

there was no record to establish the same.

6. The Commissioner has dealt with the evidence on record and concluded that the workman had committed suicide and that the death was not accidental. Nor did the death occur out of and in the course of employment. According to the Commissioner, since the appellant did not examine any eye witness to the incident, it could not be accepted that the death was due to an accident and not a suicidal death.

7. In my view, the reasoning of the Commissioner for Workmen’s Compensation is unsustainable. The respondent-Karkhana has not brought on record anything to show that one Sambhare was posted at the main gate. There is evidence on record to indicate that the deceased, although shown on duty at the Colony point gate in Exhibit C20, could have been asked to work at the main gate as well. The distance between the two gates is 1000’. The reasoning of the Commissioner that since the applicants had not produced any eye witness to the incident, her version was to be disbelieved cannot be accepted. This reasoning would equally apply to the respondent. The Respondent also has not examined any eye witness to indicate that the workman had in fact committed suicide.

8. There is nothing on record to establish that the allegation made by the Karkhana that the deceased was mentally disturbed or stressed or in a desparate frame of mind which would cause him to commit suicide. It was necessary for the respondent to prove their case that this was a case of suicide and not an accident. The defence of the Karkhana being that the deceased died due to suicide it was necessary for them to establish the same. Furthermore, assuming that the deceased did want to commit suicide, it is unbelievable that he would do so by jumping under the rear tyre of the truck. A person wanting to commit suicide would hardly be able to do so by jumping under the rear tyre of the truck. In fact, in the ordinary course, such a person would come in front of the truck rather than dash against the rear tyre of the truck as alleged by the Karkhana.

9. The Appellants, therefore, are entitled to claim compensation. However, it appears that the claim made by them is inflated. The workman was drawing a monthly salary of Rs.1300/- per month. He was 45 years of age when he died. The Relevant Factor is 169.44. Therefore, the compensation which the appellants would be entitled to is Rs.67776/-. The appellants are also entitled to the maximum penalty of 50% together with

interest @ 6% per annum from the date of the accident till payment.

10. The amount as awarded shall be paid by Respondent No.1. Respondent No.2, which is the insurance company, is not liable since the policy was a motor vehicle policy issued for an accident sustained by the driver of the motor vehicle and for a third party who claims under the Motor Vehicles Act. This being a claim for workmen's compensation against the employer who is not insured with Respondent No.2, Respondent No.2 could not be liable to make payment of the amount.

11. Respondent No.1 shall deposit the amount as stipulated above with the Commissioner for Workmen's Compensation, Sangli who shall release the amount so deposited with him to the appellants in accordance with law within a period of 12 weeks from today. Respondent No.2 is not liable to pay any amount.

12. Appeal is disposed off in the above terms.